Table of Contents

CHA	APTER 1. INITIAL APPEARANCE/	
PRE	ETRIAL RELEASE AND	
DE I	TENTION	1
§ 1:1	Historical background	-
§ 1:2	Importance of pretrial release decision	
§ 1:3	Constitutional issues—Excessive bail	
§ 1:4	—Preventive detention/no bail	
§ 1:5	Initial appearance	
§ 1:6	Right to release	
§ 1:7	Setting no-bond and the review hearing	
§ 1:8	Conditions of release	
§ 1:9	Modification and revocation of release conditions	
§ 1:10	Appellate review of pretrial release decisions	
CHA	APTER 2. PRELIMINARY	
	ARINGS	25
§ 2:1	Right to a preliminary hearing	20
§ 2:2	Waiver of a preliminary hearing	
§ 2:3	Time for commencing preliminary hearing	
§ 2:4	Procedures and evidentiary rules for preliminary hearings	
§ 2:5	Witness examination	
§ 2:6	Admissibility of testimony from preliminary hearing at trial	
§ 2:7	Review of magistrate's probable cause finding	
CHA	APTER 3. THE GRAND JURY	35
§ 3:1	Composition and authority of the grand jury	
§ 3:2	Secret proceedings	
§ 3:3	Legal instructions	
§ 3:4	Fair presentation of evidence	
§ 3:5	Remedy	
§ 3:6	Information from person under investigation	
CH	APTER 4. THE CHARGING	
	CUMENT	
§ 4:1		51
-	Notice requirements	
§ 4:2		
§ 4:3	Duplicity	

§ 4:4	Multiplicity	
§ 4:5	Challenging defective charges	
§ 4:6	Sentencing allegations and challenges	
CHA	PTER 5. DEFENDANT'S	
COM	IPETENCY	71
§ 5:1	Dusky and due process—Competency standards	
§ 5:2	Rule 11 motion to initiate determination of competency	
§ 5:3	Defense counsel's duties to client in competency proceedings	
§ 5:4	Pretrial release decisions	
§ 5:5	Experts—Appointment of experts	
§ 5:6	—Expert reports	
§ 5:7	—Disclosure of expert reports	
§ 5:8	—Protections against self-incrimination	
§ 5:9	Competency hearing—Procedure generally	
§ 5:10	—Competency finding	
§ 5:11	—Incompetent and not restorable finding	
§ 5:12	—Incompetent but restorable finding	
§ 5:13	· ·	
§ 5:14		
§ 5:15 § 5:16	•	
§ 5.10 § 5:17	-	
§ 5:18	9	
§ 5:19		
§ 5:20		
, 0.20	person proceedings	
§ 5:21	Competency in other settings—Waiver of right to	
	counsel and guilty pleas	
§ 5:22	—Postconviction proceedings	
СНА	PTER 6. REPRESENTATION OF	
DEF	ENDANT	115
§ 6:1	Right to appointment of qualified counsel	110
§ 6:2	Right to counsel of choice	
§ 6:3	Counsel's conflict of interest	
§ 6:4	Irreconcilable differences with counsel	
§ 6:5	Right to self-representation	
§ 6:6	Decisions reserved for defendant	
СНА	PTER 7. DISCOVERY	135
§ 7:1	General principles	
§ 7:2	Brady, Youngblood, and other constitutional considerations	
§ 7:3	Initial discovery and State's duty to supplement	

TABLE OF CONTENTS

§ 7:4	Disclosure by the defendant	
§ 7:5	Witness interviews and depositions	
§ 7:6	Exclusions from disclosure	
§ 7:7	Disclosure violations and sanctions	
CHA	APTER 8. GUILTY PLEAS AND PLEA	
BAR	GAINING	151
§ 8:1	Knowing, intelligent, and voluntary guilty pleas	101
§ 8:2	No-contest and <i>Alford</i> pleas	
§ 8:3	Plea colloquy	
§ 8:4	Factual basis for plea	
§ 8:5	Trial to the bench and trial by submission on stipulated record	
§ 8:6	Right to counsel in plea negotiation stage	
§ 8:7	Duty of state to honor agreements	
§ 8:8	Withdrawing from plea agreement	
§ 8:9	Unenforceable terms of plea agreement	
CHA	APTER 9. SPEEDY TRIAL	177
§ 9:1	Constitutional provisions	1
§ 9:2	Statute of limitations	
§ 9:3	Preindictment delay and due process	
§ 9:4	Constitutional speedy trial protections—Sixth	
3 0.1	Amendment	
§ 9:5	Rule-based speedy trial requirements—Rule 8	
§ 9:6	Speedy trials for defendants already detained on other	
	charges	
CHA	APTER 10. JOINDER AND	
	ERANCE	197
	General principles	101
§ 10:2		
§ 10:3		
§ 10:4		
§ 10:5	Rub-off effect / disparity of evidence	
§ 10:6	- •	
СНА	APTER 11. SUPPRESSION OF	
	TEMENTS	213
§ 11:1		
§ 11:2		
§ 11:3		
§ 11:4	1	
§ 11:5		

ARIZONA CRIMINAL PRACTICE MANUAL

§	11:6	Invoking and waiving Miranda rights	
§	11:7	Honoring Miranda	
§	11:8	Custodial interrogation	
Ş	11:9	Public safety exception	
	11:10	Involuntary Miranda waiver	
	11:11	Violation of right to counsel	
	11:12	Fruit of the poisonous tree—Involuntary/unwarned	
_		statement	
§	11:13	—Unconstitutional arrest	
§	11:14	Use of involuntary/unwarned statements at trial	
§	11:15	Use of defendant's silence at trial	
(НАР	TER 12. SEARCH AND	
S	EIZU	J RE	239
§	12:1	Historical background	
§	12:2	Government action required	
§	12:3	Home searches and seizures	
§	12:4	Reasonable expectation of privacy— <i>Katz</i>	
§	12:5	—Visible to the public	
§	12:6	—Third-party doctrine	
§	12:7	—Abandonment	
§	12:8	—Standing	
§	12:9	Search warrants—Probable cause	
§	12:10	—Staleness / anticipatory warrants	
§	12:11	—Particularity	
§	12:12	—Service of warrant	
§	12:13	Warrantless arrest	
§	12:14	Warrantless search—Generally	
§	12:15	—Search incident to arrest	
§	12:16	—Exigent circumstances	
§	12:17	—Consent	
§	12:18	—Automobile searches	
§	12:19	—Inventory searches	
§	12:20	—Emergency aid	
§	12:21	—Community caretaker function	
§	12:22	—Protective sweep	
Ş	12:23	—Plain view	
	12:24	—Plain feel	
-	12:25	—Plain smell	
	12:26	—Hot pursuit	
	12:27	—Probationers and parolees	
	12:28	—Administrative searches	
	12:29	—Special needs	
-	12:30	—Arrestee searches at jail	
-	12:31	Investigatory detention and reasonable suspicion	
_	12:32	Seizure	
8	14.04	Delpaie	

Table of Contents

§ 12:33 § 12:34 § 12:35 § 12:36	Demands for identification Terry frisks Vehicle stops Canine units	
§ 12:37	Driving under the influence	
§ 12:38	Wiretaps and electronic communications	
§ 12:39	Arizona Constitution	
§ 12:40	Suppression hearings	
CHAI	PTER 13. EYEWITNESS	
	TIFICATION	289
§ 13:1		200
§ 13:2		
§ 13:3	—Police action required	
§ 13:4	—Lineup	
§ 13:5	—One-person showup	
§ 13:6	—Photographs	
§ 13:7	—In-court identification	
§ 13:8	Reliability factors—Biggers and Manson	
§ 13:9	Reliability—Arizona cases applying reliability factors	
§ 13:10	—Opportunity to view the person	
§ 13:11	—Witness's degree of attention	
§ 13:12	—Accuracy of the description	
§ 13:13	—Witness's level of certainty	
§ 13:14	—Length of time between crime and confrontation	
§ 13:15	—Suggestiveness and reliability under <i>Henderson</i>	
§ 13:16	—System variables	
§ 13:17	—Estimator variables	
§ 13:18	—Henderson's solution	
§ 13:19	Dessureault hearing and available curative actions	
CHAI	PTER 14. EXCLUSIONARY RULE	313
§ 14:1	History and purpose of the exclusionary rule	010
§ 14:2	Arizona's exclusionary rule	
§ 14:3	Fruit of the poisonous tree	
§ 14:4	Independent source	
§ 14:5	Inevitable discovery	
§ 14:6	Attenuation	
§ 14:7	Good faith exception for reliance on search warrant	
§ 14:8	Good faith exception for reliance on existing law	
СНАІ	PTER 15. DEFENSES	005
_		335
§ 15:1	General principles	
§ 15:2	Justification defenses Justification—Self-defense and defense of third	
§ 15:3	persons	

	THEORY CHANGE I MOTION I.	171110711
§ 15:4	—Crime prevention	
§ 15:5	—Defense of premises and property	
§ 15:6	—Duress and necessity	
§ 15:7	—Defendant's circumstances	
§ 15:8	Defenses that negate elements of offense	
§ 15:9	Affirmative defenses	
§ 15:10	Defenses to sexual offenses	
§ 15:11	Entrapment	
§ 15:12	Insanity	
§ 15:13	Voluntary intoxication	
§ 15:14	Diminished capacity, impulsivity, and mental health	
§ 15:15	Mistake of fact and mistake of law	
CHAI	PTER 16. RELEVANCY AND RELATI	ED
	ENTIARY RULES	363
§ 16:1	General principles	
§ 16:2	Relevance and unfair prejudice	
§ 16:3	Admitting defendant's character evidence	
§ 16:4	Admitting victim's character for violence	
§ 16:5	Admitting evidence of victim's sexual conduct	
§ 16:6	Admitting third-party culpability evidence	
§ 16:7	Other-act evidence against defendant	
§ 16:8	Intrinsic evidence	
§ 16:9	Rule 404(b)(2) proper purpose: motive	
§ 16:10	Rule 404(b)(2) proper purpose: intent and knowledge	
§ 16:11	Rule 404(b)(2) proper purpose: opportunity	
§ 16:12	Rule 404(b)(2) proper purpose: preparation / plan	
§ 16:13	Rule 404(b)(2) proper purpose: identity	
§ 16:14	Rule 404(b)(2) proper purpose: absence of mistake / accident	
§ 16:15	Rule 404(c)	
§ 16:16	Profile evidence	
§ 16:17	Habit	
СНАЕ	PTER 17. HEARSAY	393
	General principles	000
§ 17:2	Definition of hearsay—Offered for the truth	
§ 17.2 § 17:3	—Intended as an assertion	
-		
§ 17:4	Exclusion from definition of hearsay—Prior inconsistent statements	
§ 17:5	—Prior consistent statements	
§ 17.6	—Prior statement of identification	
-		
§ 17:7	Statement of a party apparent in further and of	
§ 17:8	Statement of a party opponent in furtherance of conspiracy	
§ 17:9	Rule 803 exceptions	

TABLE OF CONTENTS

§ 17:10 Rule 804 exceptions	
§ 17:11 Rule 807—Residual exception	
CITADTED 10 ODINION TECTIMONIV	
CHAPTER 18. OPINION TESTIMONY	461
§ 18:1 Opinion testimony—Generally	
§ 18:2 Lay witness opinion testimony	
§ 18:3 Experts—Generally	
§ 18:4 —Rule 702	
§ 18:5 —The Daubert test	
§ 18:6 —Qualification of expert	
§ 18:7 —Proper subjects of expert testimony	
§ 18:8 —Bases of expert testimony	
§ 18:9 —Opinions on the ultimate issue § 18:10 —Rule 403	
§ 18:11 —"Dual-capacity" witnesses § 18:12 —Challenging experts	
§ 18:13 —Channelighing experts § 18:13 —Learned treaties	
y 10.13 —Learned treaties	
CHAPTER 19. WITNESS'S PRIVILEG	E
AGAINST SELF-INCRIMINATION	491
§ 19:1 Generally	101
§ 19:2 Privilege applies only to natural persons	
§ 19:3 Definition of "incriminating"	
§ 19:4 Document production and self-incrimination	
§ 19:5 Invocation of the privilege	
§ 19:6 Waiver	
CHAPTER 20. TESTIMONIAL	
PRIVILEGES	503
§ 20:1 Generally	
§ 20:2 Spousal privilege	
§ 20:3 Attorney-client privilege	
§ 20:4 Corporate counsel and attorney-client privilege	
§ 20:5 Crime fraud exception to attorney-client privilege	
§ 20:6 Waiving attorney-client privilege—Client claims against attorney	
§ 20:7 Physician-patient privilege	
§ 20:8 Clergy-penitent privilege	
CHAPTER 21. WITNESS	
COMPETENCY	527
§ 21:1 Generally	521
§ 21:2 Hypnotized witnesses	
§ 21:3 Judge and jurors as witnesses	

CHAP	TER 22. IMPEACHMENT	533
§ 22:1	Generally	
§ 22:2	Bias and motive	
§ 22:3	Opinion or reputation evidence relating to the untruthfulness of the witness (character witnesses)	
§ 22:4	Impeaching with dishonest conduct	
§ 22:5	Impeachment by contradiction or incapacity	
§ 22:6	Prior inconsistent statements—Generally	
§ 22:7	—Admissibility as substantive evidence	
§ 22:8	Avoiding confusion between prior inconsistent statements, refreshing memory, and past recollection recorded	
§ 22:9	Impeachment with prior conviction—Generally	
§ 22:10	—Prior felony convictions—Rule 609(a)(1)	
§ 22:11	—Involving dishonesty or false statement—Rule 609(a)(2)	
§ 22:12	—Completing the impeachment	
§ 22:13	—Defendant's waiver of right to challenge Rule 609 ruling on appeal	
§ 22:14	—Age of prior convictions	
§ 22:15	Rule 806—Impeaching the hearsay declarant generally	
§ 22:16	—Prior convictions	
§ 22:17	—Inconsistent statements	
§ 22:18	—Bias and motive	
§ 22:19	—Opinion or reputation evidence	
§ 22:20	—Extrinsic evidence of specific instances of untruthfulness	
§ 22:21	—Rehabilitating a hearsay declarant	
§ 22:22	—Advanced impeachment	
§ 22:23	—Opening the door to impeachment	
§ 22:24	Improper limitations on impeachment during defense	
§ 22:25	cross- examination Rehabilitation	
CHAP	TER 23. CONFRONTATION	563
§ 23:1	Generally	
§ 23:2	Face-to-face confrontation	
§ 23:3	Confrontation and hearsay—Overview	
§ 23:4	Statements offered for a nonhearsay purpose	
§ 23:5	"Testimonial" statements of fact witnesses	
§ 23:6	"Testimonial" statements of scientific witnesses	
§ 23:7	Unavailability of declarant	
§ 23:8	Opportunity for cross-examination at trial	
§ 23:9	Prior opportunity for cross-examination	
§ 23:10	Forfeiture by wrongdoing	
§ 23:11	Opening the door	

CHA	PTER 24. COMPULSORY	
PRO	CESS	595
§ 24:1		
§ 24:2	Procedure to subpoena witnesses in Arizona	
§ 24:3	Procedure to subpoena witnesses in another state	
§ 24:4	Prisoner witnesses	
§ 24:5	Remedies if witness fails to appear	
CHA	PTER 25. JURY ISSUES	605
§ 25:1	Right to jury trial—Generally	
§ 25:2	Qualifications of jurors	
§ 25:3	Number of jurors	
§ 25:4	Jury selection process—Generally	
§ 25:5	Challenges for cause	
§ 25:6	—Pretrial publicity	
§ 25:7	Peremptory challenges	
§ 25:8	Juror misconduct—Generally	
§ 25:9	—Exposure to extrinsic evidence	
§ 25:10	—Improper contact with someone concerning the case	
§ 25:11	—Lying about bias during voir dire	
§ 25:12	Dismissal of jurors and substitution of alternate jurors	
§ 25:13	Jury notetaking and questions	
§ 25:14	Notes from the jury	
§ 25:15	Polling the jury	
CHA	PTER 26. OPENING STATEMENTS A	ND
	SING ARGUMENTS	635
§ 26:1	Opening statements	000
§ 26:2	Closing arguments—Generally	
§ 26:3	Improper argument—Generally	
§ 26:4	Misstatement of law	
§ 26:5	Arguing facts not in the record or for an impermissible purpose	
§ 26:6	Personal attacks on the defendant, witnesses, opposing counsel	
§ 26:7	State's comment on defendant's failure to testify	
§ 26:8	State's comment on defendant's silence before trial	
§ 26:9	State's comment on defendant's in-court behavior	
§ 26:10	State's vouching for witnesses	
§ 26:11	State's inflammatory arguments	
§ 26:12	State's personal belief in defendant's guilt	
§ 26:13		

CHA	PTER 27. TRIAL PRACTICE	559
§ 27:1	Rule excluding witnesses prior to testimony	
§ 27:2	Mistrials	
§ 27:3	Mistrials over the defendant's objection	
§ 27:4	Mistrials due to prosecutorial misconduct or judicial	
	overreaching	
§ 27:5	Hung juries	
§ 27:6	Requesting jury instructions	
§ 27:7	Judgment of acquittal	
§ 27:8	Motions for new trial	
§ 27:9	Contempt	
CHA	PTER 28. SENTENCING 6	81
§ 28:1	General Principles	
§ 28:2	Pre-sentence report and mental health evaluations	
§ 28:3	Aggravating and mitigating factors	
§ 28:4	Presenting sentence enhancements to the jury	
§ 28:5	Presenting aggravation and mitigation at sentencing	
§ 28:6	Terms of imprisonment	
§ 28:7	Consecutive and concurrent terms of imprisonment	
§ 28:8	Prior convictions and repetitive offenses	
§ 28:9	Restitution	
§ 28:10	Post-sentencing matters	
CHA	PTER 29. PROBATION 7	03
§ 29:1	General principles	
§ 29:2	Imposing and modifying conditions of probation	
§ 29:3	Lawful and unlawful probation sentences and conditions	
§ 29:4	Probation revocation hearings	
§ 29:5	Terminating and revoking probation	
§ 29:6	Separation of powers considerations	
§ 29:7	Mandatory probation for treatment for drug offenders (Prop 200)	
CHA	PTER 30. JUVENILES PROSECUTED	
	IDEDIOD COLIDA	21
§ 30:1	Charging in superior court	-1
§ 30:2	Transferring cases from superior court back to juvenile	
5	court	
§ 30:3	Consequences of juvenile court adjudications	
§ 30:4	Incarceration of juveniles in adult detention centers	

Table of Contents

CHAPTER 31. PREPARING THE DEFENDANT FOR APPEALS AND POST-CONVICTION PROCEEDINGS AND CONCLUDING REPRESENTATION

729

- § 31:1 Appellate jurisdiction of the courts
- § 31:2 Filing the notice of appeal
- § 31:3 Filing the notice of postconviction relief
- § 31:4 Postrepresentation responsibilities of defense counsel

Table of Laws and Rules

Table of Cases

Index